

HUMAN RESOURCE ISSUES REGARDING PANDEMIC Post-Declaration of Emergency

Governor's Directive 07-06, published on June 22, 2007, directs the Department of Personnel (DOP) and the Office of Financial Management Labor Relations Office (OFM/LRO) to provide guidance to state agencies on human resource management during a declared pandemic emergency. Specifically, we have been asked to address leave policies, telecommuting, alternate work arrangements, protecting employee health and safety, and hiring policies.

The Attorney General's Office previously issued a Q&A regarding human resource issues that might arise during a pandemic, but before a declared pandemic emergency. That document was compiled in collaboration with DOP and OFM/LRO in order to serve as an initial research and planning tool. The premise of the Q&A is that, while you cannot identify the exact issues that will arise if there is a pandemic emergency, the state rules, regulations, collective bargaining agreements, and agency policies will govern human resource management issues.

A Gubernatorial Declaration of Emergency may suspend the applicability of personnel rules, regulations, provisions of the collective bargaining agreements, and agency policies. In that case, agencies will have questions as to how to address human resource management issues.

As the Attorney General's Office's Q&A demonstrates, the rules and collective bargaining agreements allow agencies flexibility to address staffing issues, including in times of emergency. These rules and collective bargaining agreement provisions are designed to provide agencies the flexibility to address a variety of issues. Any suspension of rules, regulations, or collective bargaining agreement provisions will be to ameliorate provisions that are hindering or precluding agencies' ability to provide services. So to the extent possible, agencies should continue to follow applicable collective bargaining agreements for represented employees or Washington Administrative Code (WAC) 357 for non-represented employees.

In conducting planning for a pandemic emergency, each agency can take several steps to identify and mitigate issues that may arise during an emergency. First, each agency should identify any first responder, essential, and non-essential functions. Next, the agency should identify how they will continue to have staff available to perform these functions. Finally, agencies should identify whether any agency policies, rules, or collective bargaining agreement provisions will be an obstacle to fulfilling first responder or essential functions. Agencies should pay careful attention to their own policies to ensure that the policies do not inadvertently handcuff an agency in an emergency situation.

Aside from these general guidelines, agencies may want to consider the following:

LEAVE

As indicated in the Q&A, agencies can rescind previously approved leave, compensatory time, and personal holiday in order to provide necessary coverage.

As of July 1, 2007 the rules allow employers to develop a sick leave pool or pools within their agency. The purpose of a sick leave pool is to allow general government state employees, within an agency, to pool sick leave to be used by participating employees who have a personal illness, accident, or injury. If an agency had a sick leave pool in place before a pandemic emergency hit it could prove to be very useful. Unless the Sick Leave Articles in the collective bargaining agreements were suspended, they do not provide for use of sick leave pools for represented employees.

TELECOMMUTING

Agencies already possess the authority to allow work to be done at alternate work sites, including at the employee's home. During a declared emergency, agencies may need to consider a broader use of telecommuting. In preparing emergency plans, agencies should identify essential functions that may be accomplished remotely and how that can be accomplished.

ALTERNATE WORK ARRANGEMENTS:

Agencies should identify which functions, particularly first responder and essential functions, that may be staffed by personnel on alternate schedules. The current collective bargaining agreements and rules allow for the assignment of alternate work schedules. Agencies should adhere to the schedule change notice requirements when possible.

Reassignment of an employee to a different geographic location (other than the employee's home) may be necessary. Supervisors may reassign employees to a different work station that is within a reasonable commute. Employers should avoid reassignment of an employee to a work location that is beyond a reasonable commute if possible. If the employee agrees, a reassignment to a position beyond a reasonable commute can occur.

In order to accurately keep track of all hours worked, time sheets should be kept on hand for use during a declared emergency.

PROTECTING EMPLOYEE HEALTH AND SAFETY

For the purpose of protecting employee health and safety the employer can require an employee to leave the work site if the employer has determined the employee is sick or has been potentially exposed to those who are sick.

If it becomes necessary to reassign employees to new duties employers need to provide employees with proper training and any personal protection equipment necessary to perform the new duties.

HIRING POLICIES

During a declared emergency, employers may need to fill positions as quickly as possible. It may be necessary to hire employees on a nonpermanent basis. Hiring employees on a nonpermanent basis will enable employers to bypass permanent hiring procedures. Employers should follow the pertinent collective bargaining agreements or rules to the extent possible when making nonpermanent appointments.

We expect that agencies will encounter specific questions as they undergo planning. Agencies with questions can forward them to DOP, OFM/LRO or their assigned Labor & Personnel assistant attorney general.